

## DETAILED ACTION

### *Response to Amendment*

1. As a result of the amendment to the claims, the rejection of claims 191-192 under 35 U.S.C. 112, second paragraph has been withdrawn.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claim 191 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 191 recites the limitation "the skirt structure having its lower portion coupled to said sheet of web material of said hood most distal from said first panel, the backing strip having a lower portion coupled to said second panel of the sheet of web material." This limitation recites that the backing strip is coupled to the lower portion of the second panel of the sheet of web material. This limitation also recites that the lower portion of the skirt structure is coupled to the sheet of web material of the hood, most distal from the first panel. The limitation is not clear as to what portion of the sheet of web material would be considered "most distal from the first panel" especially since the hood and the panels of the bag are all made from a single sheet of web material.

Claim 191 further is not clear as to which portion of "said skirt structure" is being referred to, since there are two skirts recited in the independent claim: "the first skirt structure" and "the second skirt structure."

Claim 191 recites the limitation "the backing strip having a lower portion." This limitation is subjective since the claim does not define what point of the backing strip can be considered a lower portion.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203, 205-218 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buchman et al. (US 20010053253) in view of Stolmeier et al. (US 6257763), McMahon (US 6138439) and in further view of Belmont et al. (US 6327754), Weeks (US 5092684),

**Provan (US 6286189), May (US 5725312), and Malin (US 6183134), for the reasons given in the previous Office Action, mailed July 8, 2009.**

**2. Claim 191 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203 and 205-218 8, above, and in further view of Tilman (US 5024537), for the reasons given in the previous Office Action, mailed July 8, 2009 and in further view of Van Erden et al (US 4925316).**

Regarding the new limitations to claim 191, which recite that the backing strip extends below the lower portion of the inside surface of the skirt structure, it is noted that the backing strips taught by Malin (figure 3, item 34, 36, for instance) teaches a backing strip extending beyond the distal portion of the skirt structure (figure 3, items 24 and 26). Although Malin does not teach that the backing strip is adhesively joined to the inside surface, whether the backing strip was joined to the inside or outside surface of the extending skirt structure would have been an obvious rearrangement of parts that would have been an obvious matter of design choice.

Regarding the new limitation of the skirt structure having its lower portion coupled to said sheet of web material of said hood most distal from the first panel, in light of the rejection under 112, second paragraph, it is noted that Buchman et al. already teaches the web material of the hood secured to a lower portion of the skirt structure.(see figure 7, near item 70). Further regarding the sheet of web material of said hood most distal from the first panel, it is noted that Van Erden '316 teaches a first side of the sheet of

web material (figure 5, item 110) and a second side (figure 4, item 108) wherein the second side comprises a sheet of web material that has been secured to both the skirt of the reclosable fastener and to a backing strip (item 117). The only difference between the backing strip taught by Van Erden '316 and the claimed backing strip is the particular orientation of the backing strip coupled to the inside surface of the skirt. The combination provides a tamper evidence feature to the reclosable fastener.

Nevertheless, since Van Erden '316 already teaches the concept of coupling a sheet of web material that is distal from the first panel to both a backing strip and to the skirt, to couple the backing strip to the inside of the skirt would thus have been an obvious rearrangement that would have been a matter of design choice which would have had the added purpose of providing tamper evidence to the reclosable fastener structure.

Regarding the new limitation of the backing strip having a lower portion coupled to the second panel of the sheet of web material, in view of the rejections under 35 U.S.C. 112, second paragraph, above, it is noted that Malin encompasses the sheet of web material secured to a "lower portion" of the backing strip. In any case, the backing strip taught by Van Erden '316 has also been coupled to the second panel at a lower portion. Furthermore, it is noted that the particular location at which the sheet of web material was secured to the backing strip would have been a function of the particular length of the single sheet of web material. Since Malin already teaches a sheet of web material secured to a backing strip, the particular location of the securement of the second sheet of web material to the backing strip would have been an obvious result effective variable, routinely determinable by experimentation, depending on the

particular length of the sheet of web material employed for making the bag and hood structure.

3. Claims 161-163, 167, 198-200 and 204 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203 and 205-218, above, and in further view of Hayashi (US 6074097), for the reasons given in the previous Office Action, mailed July 8, 2009.

4. Claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203, 205-218 rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 6148588) in view of Buchman et al. (US 20010053253) and in view of Stolmeier et al. (US 6257763), McMahon (US 6138439), Belmont et al. (US 6327754), Weeks (US 5092684), Provan (US 6286189), May (US 5725312) and Malin (US 6183134), for the reasons given in the previous Office Action, mailed July 8, 2009.

5. Claim 191 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203, 205-218, above in paragraph 4, and in further view of Tilman (US 5024537), for the reasons given above in paragraph 2.

**6. Claims 161-163, 167, 198-200 and 204 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203, 205-218, above in paragraph 4, and in further view of Hayashi (US 6074097) for the reasons given above in paragraph 3.**

***Response to Arguments***

7. On pages 21-22 of the response, applicants urge that Buchman does not illustrate any perforations in figure 7 and further shows a separate hood and thus the reference to Buchman cannot be cited for teaching perforations below the sipper assembly. It is noted however, that Buchman teaches on paragraph 0067, the use of structural lines of weakness, such as perforations for the purpose of removing tamper evident hood structure. In this cited paragraph, Buchman et al. even teaches that the seal between the skirt structure (figure 7, items 37 and 39) and the tamper evident hood (60) should be broken for removing the hood. In any case, both Stolmeier et al. and McMahon et al. teach that it has been conventional in the art to arrange the lines of perforations for removing a tamper evident hood that encloses a reclosable zipper structure, below the zipper structure, which would thus have facilitated access to the zipper structure.

8. On the bottom of page 22 of the response, applicants urge that McMahon illustrates the bottom of the bag and the perforations positioned above the reclosable feature. Nevertheless, it is noted that one would not be utilizing the reclosable zipper in an upside down fashion, otherwise the contents would thus have been more likely to fall out. Obviously, the structural weaknesses taught by this figure of McMahon are still arranged such that when the hood is removed at the lines of structural weakness, the reclosable zipper extends beyond the lines of structural weakness.

9. Also on the bottom of page 22 as well as on page 23 of the response, applicants urge that McMahon and Stolmeier do not teach the structural weakness in the single sheet of web material, as required by the independent claims. It is noted however, that McMahon, as well as Weeks, May and Belmont et al., teach the use of a single sheet of web material to which has been secured reclosable fasteners, and wherein the single sheet of web material forms a "hood" structure over the reclosable fasteners. Thus, to use a single sheet of web material to form the hood as well as the product containing portion of the bag would thus have been an obvious matter of design choice, since the art has already recognized that it has been conventional to form a bag from a single sheet of material and which also forms a hood having lines of structural weakness for removing the hood.

10. Applicants further urge on page 23 of the response that Weeks and Belmont do not teach a hood having first and second areas of weakness as presently claimed.

However, Weeks, Stolmeier et al. and McMahon, nonetheless, do teach the use of perforations for removing a hood portion, and McMahon also teaches using a single sheet of web material.

11. On pages 23-24 of the response, applicants urge that Buchman does not suggest the use of a single sheet, nor does Buchman suggest the need for perforations. These arguments have been considered but are not persuasive. It is noted that Buchman does teach the need for structural weaknesses in the form of perforations, for the purpose of removing the tamper evident structures and McMahon teaches that it has been conventional to provide a similar tamper evident hood, using a single sheet of web material. To thus position the perforations for removing the hood such that when the hood is removed the reclosable zipper extends beyond the bag would have been obvious to one having ordinary skill in the art, for the purpose of facilitating access to the zipper. The art, taken as a whole, also teaches this arrangement of the perforations, while using a single sheet of web material. Since the art recognized the use of multiple as well as single sheets of web material for forming the hood and product containing portions of the bag, to thus modify the combination and employ another conventional expedient for forming the hood and product containing portion of the bag would thus have been an obvious matter of choice and/or design.

12. On pages 24-25 of the response, applicants urge that since May and Buchman require at least two web materials to form their bags and thus do not teach a single



sheet of web material, that the examiner is relying on hindsight to make the obviousness rejection regarding the backing. This argument is not persuasive. It is noted that Malin has been relied on to teach a sealing web material employed for securing the bag to an extending backing strip instead of directly securing the bag to the skirt structure for the purpose of improving the sealability of the bag to the zipper structure. Thus, Malin teaches employing the backing strip has been advantageous for sealing a zipper structure to the bag. Since Buchman et al. already teaches filling a product into a bag through an opening between the fastener skirt structure and the sheet of web material, to thus modify Buchman et al. and employ a backing strip to seal the web material for the bag to the reclosable fastener structure would have been further obvious to the ordinarily skilled artisan for the purpose of ensuring the bag material is effectively sealed to the reclosable fastener structure. Thus the art has recognized that a backing strip secured to a skirt structure has been a conventional expedient for securing a bag to a reclosable fastener and even further, teaches the advantage of improved sealability of the bag to the reclosable fastener, via the backing strip secured to the skirt structure.

13. It is noted that the art, taken as a whole, thus teaches that it has been conventional in the art to position the lines of structural weakness in the tamper evident hood structure, "below" the reclosable zipper such that when the hood is removed improved access to the zipper has been created. Additionally, the art even teaches that it has been conventional to employ single sheets of web material, while also positioning

lines of structural weakness in the hood structure, below the reclosable zippers. Therefore, applicants appear to be employing structural elements that have been conventionally employed in making bags, for their art recognized function.

14. On page 29 of the response, those arguments with regard to Buchman, Stolmeier, McMahon, Belmont, Weeks, Provan, May and Malin have been discussed above. Regarding the Thomas reference, applicants urge that Thomas does not have a skirt structure, since this structure is made out of the same material as that of the reclosable fastener. This argument has been considered but is not persuasive, since the claims do not limit the particular material of the skirt structures extending from the reclosable fasteners. The claims recite the language, "skirt structure... extending therefrom," and thus does not exclude skirt structures as taught by Thomas et al. The claims even recite that the skirt structures are integral with the fastener tracks, as indicated in claim 188, for instance.

15. On page 30 of the response, applicants urge that Thomas does not require nor does it suggest that a hood structure should be applied to provide tamper evidence. Applicants further urge that since Thomas discloses that tamper evidence features can be employed such as by securing the lower fins 30 and 34 together, that one having ordinary skill in the art would not look to modify Thomas for the purpose of providing tamper evidence by adding a hood. This argument has been considered, but is not persuasive. It is noted that Buchman (figure 7) as well as McMahon (figure 19, item 132

and 136) teach employing a combination of a hood as well as a sealing feature between the skirt structures of the reclosable fastener. Thus it has been well established in the art to provide multiple tamper evidence features and to thus add an additional tamper evidence feature for the purpose of providing added security to prevent inadvertent opening and thus spoilage of the food in the package would thus have been an obvious result effective variable, routinely determinable by experimentation.

16. Applicants arguments filed essentially urge that the rejections under 35 U.S.C. 103(a) are based on improper hindsight reconstruction of the claims. It must be recognized, however, that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In view of the discussion above, it is noted that it would have been obvious to have used a single sheet of web material since the art already teaches employing a single sheet of web material for making the bag and for creating the hood above the reclosable fastener structure. Furthermore, the art also teaches that it has been conventional to locate the structural weaknesses in the hood structure below the reclosable fastener such that when the hood has been removed, the reclosable fastener would extend beyond the bag. Thus applicants are employing conventional structural elements for their art recognized function.

### ***Conclusion***

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIREN THAKUR whose telephone number is (571)272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/V. T./  
Examiner, Art Unit 1794

/Rena L. Dye/  
Supervisory Patent Examiner, Art Unit 1794